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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Calaveras)

In re ANTHONY A., a Person Coming
Under the Juvenile Court Law.

CALAVERAS COUNTY WORKS AND HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

SHARON A. et al.,

Defendants and Respondents.

ANTHONY A.,

Appellant.

C047337

(Super. Ct. No. JD4186)

Anthony A., the minor,¹ appeals from an order of the
juvenile court dismissing a juvenile dependency petition filed

¹ During the pendency of this appeal, Anthony reached the age of 18. However, this court reviews the juvenile court's order as of the time it was entered. (*In re Ruth M.* (1991) 229 Cal.App.3d 475, 480, fn. 4.) Moreover, as Anthony had not turned 18 when the juvenile court entered its order, that court retains jurisdiction over him until he is 21. (§ 303; *In re Gloria J.* (1987) 188 Cal.App.3d 835, 839.)

pursuant to Welfare and Institutions Code section 300 after the court found the allegations contained in that petition were not proved by a preponderance of the evidence.² (Welf. & Inst. Code, § 395; undesignated statutory references are to the Welfare and Institutions Code.) Anthony contends the juvenile court's order is not supported by substantial evidence. We agree and reverse.

FACTUAL AND PROCEDURAL BACKGROUND

On May 19, 2004, Calaveras Works and Human Services Agency (HSA) filed an original juvenile dependency petition pursuant to section 300 on behalf of Anthony, who was then 17. The petition alleged, pursuant to subdivision (b) of section 300, that on or about May 17, 2004, the Sheriff's Department placed Anthony into protective custody as Anthony's mother had refused to permit him to return home. Pursuant to subdivision (g) of section 300, the petition contained the same factual allegation.

The petition also alleged, pursuant to subdivision (g), that on or about May 18, 2004, Anthony told a social worker he was thrown out of his home five days earlier and was not permitted to return. The petition alleged further that, on or about May 18, 2004, Anthony's mother told the social worker that Anthony could not return home. Anthony's mother also allegedly told the social worker that Anthony was using illegal drugs and she could "no longer control his incorrigible behaviors."

² An order dismissing a dependency petition based on insufficiency of the evidence is an appealable order. (*In re Lauren P.* (1996) 44 Cal.App.4th 763, 767.)

Anthony was detained in a confidential foster care placement on May 17, 2004. On May 20, 2004, the juvenile court found a prima facie showing was made that Anthony came within section 300. The court ordered Anthony's detention to continue.

In a July 2004 report, HSA recommended that the juvenile court assume jurisdiction of Anthony pursuant to section 300. In that report, HSA noted that Anthony's mother had refused repeatedly to allow Anthony to return home. According to the report, HSA also offered the family maintenance services, but the mother had refused, stating Anthony could return home when he completed a 28-day residential treatment program. Anthony denied the allegations about his behavior made by his mother.

The report stated that, on two past occasions, the family had failed to avail itself of services offered for Anthony's benefit. Moreover, according to Anthony, he had never had a dental appointment. Anthony also alleged he had not seen a doctor in approximately 10 years.

Anthony had "significant education deficits" and was reading well below grade level. However, after assessments were conducted, Anthony was found not to require mental health services or substance abuse treatment. HSA concluded that the allegations made by Anthony's mother and father "have been somewhat embellished."

In its July 2004 report, the Probation Department recommended that the juvenile court assume jurisdiction over the minor pursuant to section 300. That report summarized several incidents of alleged misconduct involving Anthony and noted he

had not attended school in over two years. According to the report, Anthony read at a "maximum of fifth grade level." However, as the report also noted, Anthony was making progress in various areas. Moreover, he was receiving services such as counseling, and had adjusted well to foster care.

The Probation Department concluded in part as follows: "This is a family situation where help has been needed for some time. After reviewing all of the information in this case, it is clear to the undersigned that responsibility for the present situation lays [sic] between the parents and the minor. This has been an ongoing conflicting relationship. [¶] It is an accurate statement that the parents have asked for help regarding the minor. However on more than one occasion, help was offered to the parents, who did not utilize the resources available to them. The parents were directed to the Office of Education to obtain educational help for the minor. The parents were also offered voluntary services from [HSA] and declined those services based on the fact that the mother did not feel the minor would attend counseling and stated that she could not attend parent support as she had other children to raise. This minor has also not followed through with his education. Based on his lack of interest and of his parents' lack of responsibility, the minor is now illiterate."

At the June 24, 2004, jurisdiction hearing, Anthony's mother testified that she believed Anthony required substance abuse treatment because of changes she had witnessed in his behavior and because she discovered drug paraphernalia in his

bedroom. According to his mother, Anthony refused to enter a drug program. The mother also told the juvenile court she had contacted various authorities in an attempt to obtain assistance for Anthony, but either was refused help or Anthony had refused to participate in services. The mother was aware that Anthony had a learning disability.

Anthony's father also believed Anthony had a drug problem. According to the father, Anthony's bedroom was "absolutely filled with paraphernalia." The father told the juvenile court that "for at least a year" he and Anthony's mother had attempted without success to enroll Anthony in a substance abuse program. The father agreed with the mother that, until he completed such a program, Anthony could not return home.

During the jurisdiction hearing, the juvenile court stated in part as follows: "It's my judgment that this is a proceeding brought under . . . Section 300 that has no, no basis whatsoever. [¶] In each and every instance of the allegation under (b) and under the (g) sub sections [sic] in order to sustain this petition it would require a finding of either willful or negligent neglect or misconduct of some other kind on the part of the parents. [¶] The only thing that I find that could be torqued into characterization of their conduct as improper under any 300 section is their present disinclination and refusal to have [the minor] back in their home."

When the jurisdiction hearing continued, the juvenile court and the parties discussed the possibility of the court assuming jurisdiction over Anthony as a ward of the court pursuant to

sections 601 or 602. HSA did not believe any basis for such an action existed, and continued to recommend that the court assume jurisdiction over Anthony under section 300. According to HSA, a jurisdictional basis existed pursuant to subdivisions (b) and (g) of section 300. HSA argued that the evidence adduced at the jurisdiction hearing supported a finding that Anthony had been left without any provision for support.

Counsel for Anthony's parents argued that the record reflected they had "done nothing wrong. To have that mark on their record could hinder their ability to do the foster parenting which they have begun to do." Counsel for Anthony urged the juvenile court to assume jurisdiction over Anthony pursuant to section 300.

At the conclusion of the jurisdiction hearing, the juvenile court ruled the allegations in the dependency petition had not been proved by a preponderance of the evidence and ordered the petition dismissed. In doing so, the court noted that, as it found no basis for Anthony to remain out of parental custody, he would be "coming back home." The court also stated: "I don't think he was thrown out of his home and not allowed to return. I think that he was told, you follow the rules and you have to get some assistance and he declined to do that. [¶] I do think the parents made efforts to get assistance through various agencies. [¶] The second one is that he can't come back here because he is incorrigible and abusing substances. I don't feel that is leaving a child without any provision for support. This is a family's efforts to get him some assistance and support,

that they couldn't otherwise secure through the requests. [¶] . . . [¶] I realize these are disjunctive. I don't feel on these facts this is a child left without any provisions [sic] for support. [¶] . . . [¶] There is no unwillingness or inability to provide for care or support for the child, it's the child's failure to avail himself of the opportunities that these folks make available to him. There is just not a basis to do it. [¶] I don't do this lightly, but I think the greater error would be to make a finding to try to get to a result that carries a certain sting, that castigates parents that I don't think deserve to be castigated. I cannot sustain this petition."

DISCUSSION

Anthony contends the order by the juvenile court dismissing the dependency petition is not supported by substantial evidence. According to Anthony, the court ignored the plain meaning of subdivisions (b) and (g) of section 300 by improperly requiring a showing of wrongful behavior or intent by Anthony's parents. Anthony also argues that the issue presented to the juvenile court was whether at the time of the jurisdiction hearing, he was without parental support.

Section 300 provides: "Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

"[¶] . . . [¶]

"(g) The child has been left without any provision for support; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful."

On appeal, this court must determine whether substantial evidence supports the order terminating dependency jurisdiction. (*In re Marcus G.* (1999) 73 Cal.App.4th 1008, 1014.) Our review requires that all reasonable inferences be given to support the findings and orders of the juvenile court and the record must be viewed in the light most favorable to those orders. However, evidence sufficient to support the findings and orders must be reasonable in nature, credible, and of solid value. (*In re Athena P.* (2002) 103 Cal.App.4th 617, 628-629.)

Under section 300, subdivision (g), HSA had the burden to prove Anthony had been "left without any provision for support." (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1319-1320.) In *In re Matthew S.*, the appellate court reversed a juvenile court finding of jurisdiction pursuant to subdivision (g), because there was no evidence of "malnutrition, deprivation of shelter, clothes or medical care" for the minor there. (*Id.* at p. 1320.) In *Athena P.*, *supra*, 103 Cal.App.4th 617 at page 630, the appellate court upheld a jurisdictional finding pursuant to subdivision (g) on the ground that the record showed the minor's

mother was unable to arrange care for the minor. Accordingly, the court in *In re Athena P.* did not need to decide whether substantial evidence also existed to support jurisdictional findings under subdivisions (b) and (j).

In this case, the evidence is uncontradicted, and the juvenile court found that Anthony's parents refused to permit him to return home unless and until he completed a substance abuse treatment program. On this record, Anthony had no means of support outside his home. But the court found it was Anthony's refusal to complete such a program, rather than any unreasonable conduct by his parents, that led to the action by Anthony's parents. Accordingly, the court concluded, Anthony was not left without any provision for support under subdivision (g) of section 300. This conclusion was incorrect.

The purpose of the dependency system is to provide services for the minor consistent with the best interests of the minor. (§ 202, subd. (b); *In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) It is not to punish the parents. (*Katheryn S. v. Superior Court* (2000) 82 Cal.App.4th 958, 974.) In this case, it may be true, as the juvenile court suggested, that Anthony's refusal to cooperate with his parents was the cause of his detrimental situation. However, in its preoccupation with avoidance of placing a "stigma" on the parents, the court lost sight of the fundamental purpose of the dependency system: to protect the welfare of the minor.

The Probation Department characterized the circumstances in this case accurately when it described the situation as "an

ongoing conflicting relationship." Further, that department properly assigned responsibility both to Anthony and to his parents. Doubtless the juvenile court acted with the best of intentions when presented with this conflict, one involving a minor nearly an adult.

Nevertheless, the unfortunate consequence of the juvenile court's order dismissing the dependency petition was to leave Anthony without any assurance that he would receive further assistance for his difficulties. This outcome, as we have suggested, is inconsistent with the purposes underlying the dependency system. Here, the record compels a finding that Anthony's best interests required the court to provide him with the protection he needed, which may be accomplished only by assuming jurisdiction over him.

Under the "plain and commonsense meaning" of subdivision (g) (*People v. Mendoza* (2000) 23 Cal.4th 896, 907), HSA must show only that Anthony was deprived of shelter by his parents, regardless of the reasons for or circumstances underlying that action. (§ 300, subd. (g); *In re Matthew S.*, *supra*, 41 Cal.App.4th 1311, 1320.) As we have seen, the record establishes Anthony was barred from his home, and his parents made no other arrangements for him. Accordingly, he was "left without any provision for support," pursuant to subdivision (g) of section 300.

The juvenile court erred in finding to the contrary. We conclude the court's order was not supported by substantial evidence. On remand, the juvenile court must enter a new order

sustaining the dependency petition and proceed to disposition, after considering any changed circumstances in the case.³

In light of our disposition, we need not decide whether the juvenile court erred in finding no basis for jurisdiction under section 300, subdivision (b). (*In re Athena P.*, *supra*, 103 Cal.App.4th 617, 630.)

DISPOSITION

The order of the juvenile court dismissing the dependency petition is reversed, and the matter is remanded to the juvenile court for further proceedings consistent with this opinion.

_____, J.
SIMS

We concur:

_____, P.J.
SCOTLAND

_____, J.
CANTIL-SAKAUYE

³ For example, HSA may decide to move to dismiss the petition if Anthony and his parents have been able to reconcile their differences.